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FOR ARGUMENT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1662

UNITED STATES OF AMERICA, *Appellant*

vs.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.

On Appeal From the United States District Court For the Northern District of Alabama

MOTION OF MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND ET AL., TO FILE BRIEF AMICUS CURIAE AND BRIEF OF AMICUS CURIAE

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The Mexican American Legal Defense and Educational Fund hereby moves the Court, pursuant to Rule 42(3) of its Rules of Practice, for leave to file the attached brief as amicus curiae in support of reversal of the judgement below. This motion and the attached brief are timely filed within the

time allowed for filing of Appellant's brief on the merits. Appellant, the United States, has given its consent to the filing of this brief by letter from the Solicitor General which has been filed with this Court. Appellee has not consented to this filing. In support of this motion, we rely on the following:

1. Interest of Amicus Curiae.

The Mexican American Legal Defense and Educational Fund is a not-for-profit corporation dedicated to ensuring that the civil rights of Mexican Americans are properly protected. With offices throughout the Southwest, in California, and in Washington, D.C., MALDEF provides provides legal assistance to safeguard the Mexican American community's educational, political and voting rights.

Protecting the voting rights of Mexican Americans has been one of MALDEF's primary concerns and to this end MALDEF has represented Mexican American voters throughout the Southwest in a number of lawsuits. Additionally, it has provided technical assistance to the Congressional committees which held hearings on the Voting Rights Act Amendments of 1975. The voting rights of Mexican American citizens of Texas and the continuing coverage of all political jurisdiction in Texas under

the Voting Rights Act is of particular concern to MALDEF. It has recently expressed and explained this concern to the Court in its role as amicus curiae in Briscoe v. Bell, No. 76-60 (October Term, 1976). MALDEF has devoted substantial resources to monitor and implement the 1975 amendments, has brought many cases under the Act, and has filed other actions challenging discriminatory voting practices and procedures on behalf of Mexican American voters in Texas. However, MALDEF does not have sufficient resources to challenge all such practices, thus, continued application of the provisions of the Voting Rights Act to all political subdivisions of the State of Texas and other covered states, here challenged by the Board of Commissioners of Sheffield, Alabama, is essential if the voting rights of Mexican Americans are to be fully protected. The outcome of this litigation vitally concerns the voting rights of Mexican Americans in more than 3000 governmental units in the State of Texas alone.

2. Facts and Questions That May Not Be Fully Presented by the Parties.

A significant number of Mexican American voters, primarily in the State of Texas will be directly influenced by the outcome of the instant case. In 1975, after extensive hearings,

Congress passed amendments to the Voting Rights Act which extended the Act's coverage to the State of Texas and its political subdivisions. Since the passage of these amendments Mexican American voters in Texas have made strides in overcoming more than a century of discrimination hindering their access to the political process. The section 5 preclearance requirements of the Act applied to all the governmental units in Texas have been the major vehicle for increasing Mexican American political access and ending discrimination in the electoral process. If the section 5 coverage of the majority of these governmental units were to end, Mexican American voters would lose their most valuable tool in their struggle to end discrimination in voting and many jurisdictions would act in ways adverse to the interests of Mexican Americans as they did before the 1975 Amendments became effective. Congress intended, by the passage of the 1975 Amendments, to end such discrimination. Its intent would be subverted by limiting section 5 coverage to those jurisdictions which conduct voter registration.

The foregoing considerations are relevant to disposition of this case and are discussed in the attached brief.

3. Conclusions.

For the reasons stated above, the Mexican American Legal Defense and Educational Fund move that the Court grant leave to file the attached brief as amicus curiae.

Respectfully submitted,

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BRIEF ON BEHALF OF AMICUS CURIAE

Mexican American Legal Defense
and Educational Fund

STATEMENT

In 1965 against a background of a century of neglect of the civil rights of Black citizens, Congress enacted the Voting Rights Act of 1965, 42 U.S.C. §1973, et seq. (hereinafter "the 1965 Act" or "the Act." The 1965 Act was grounded upon Congressional findings that the voting rights of Black Americans had been systematically and effectively suppressed at the state and local level in the southern

United States. The Act "was designed by Congress to banish the blight of racial discrimination in voting which has infected the electoral process in parts of our country for nearly a century." South Carolina v. Katzenbach 383 U.S. 301, 308, 86 S.Ct. 803, 808 (1966).

The 1965 Act contained a scheme of remedial provisions designed to identify those states where voting discrimination had been particularly egregious and to monitor carefully all voting and electoral laws and practices within those States and their political subdivisions. Once a State was identified by the United States Attorney General and the Director of the Census as being covered by the 1965 Act. Section 5 of the Act, 42 U.S.C. §1973c prohibits the enactment or enforcement of any new voting regulation or law within the State until it is reviewed and approved by the Attorney General.

In 1975, the Congress re-examined the problem of voting discrimination in America and found that the same pattern of disenfranchisement and dilution of Black voter rights which confronted Black citizens in the South in 1965 confronted Mexican American voters in Texas. Following extensive hearings,

Congress passed the 1975 Amendments to the 1965 Act.[1/] By the designation of the U.S. Attorney General and the Director of the Census, the Act and the 1975 Amendments were made applicable to the State of Texas and its political subdivisions in September, 1975, 40 Fed.Reg. 43746. In Briscoe v. Bell, _____U.S. _____, 97 S. Ct. 2428 (1977), the Court affirmed the validity of applying Section 5's preclearance provisions to the State of Texas.

On December 13, 1976, a three judge United States District Court construed the Voting Rights Act in such a way as to limit the Section 5 preclearance those states or political subdivisions therein which conducted voter registration. This construction of the Act excludes from Section 5 coverage, numerous jurisdictions conducting elections in states such as Alabama and Texas which are subjected in their entirety to such coverage by Section 4(b), 42 U.S.C. 1973b(b) of the Act.

Were the District Court's startling and unprecedented limitation of Section 5 sustained by the Court, the beneficient remedial measures sought to be enacted by

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1/ 89 Stat. 400

Congress would be nullified insofar as municipal, school district and other special district elections are concerned. Mexican American voters throughout the State of Texas, and in other jurisdictions now thought to be covered under Section 5,[2/] would then be returned to a condition in which they found themselves prior to 1975 because of their diluting voting rights, a condition characterized by "invidious discrimination in education, employment, economics, health [and] politics. . ." Graves v. Barnes, 343 F. Supp. 704, 728 (W.D. Tex. 1972), aff'd. in relevant part sub nom.; White v. Regester, 412 U.S. 755 (1973).

Because of the history of voting rights discrimination against Mexican Americans in Texas, the nullification of Section 5 as

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2/ Texas and Arizona are the two Southwestern States designated under Section 4(b) as being subject to the preclearance requirements of Section 5. Other Southwestern political jurisdictions with substantial Mexican American populations which are subject to Section 5 include counties in California, Colorado, and New Mexico. The most substantial number of Mexican American voters politically affected by the decision in the instant case reside in Texas and thus, amicus, presents the past and current situation in Texas to this Court in more detail.

applied to local electoral units would present a grave threat to the newly achieved rights of Mexican American voters. Those rights are at stake in this case.

SUMMARY OF ARGUMENT

In enacting the Voting Rights Act, Congress acted pursuant to the enforcement powers granted by the Fifteenth Amendment to the United States Constitution and with the intent to end voting discrimination. Both the 1965 Act and the 1975 Amendments were enacted following extensive hearing documenting widespread abuse at all levels of electoral politics in various jurisdictions. Congress, aware that its previous attempts to guarantee the right to vote to all citizens had been unsuccessful, intended to enact the broadest possible remedy to end the pervasive discrimination it found.

The Act was adopted to insure that all voters in all elections in those areas of the country with history of voter discrimination had equal and unimpeded access to the polls and that their voting strength would not be impermissably diluted. The Act includes a mechanism by which these areas are to be identified and a provision which requires that all voting changes enacted or administered within the identified jurisdiction be

precleared by the Attorney General. The claim asserted in this case by the City of Sheffield, that only those changes implimented by the designated state or political subdivision are subject to the requirements of Section 5, is contrary to Congress' intent. If all changes within a designated jusisdiction are not subject to preclearance, the rights of minority voters would be unprotected in the majority of elections. Since many governmental units in designated areas would be free to continue discriminatory practices, the intent of Congress to ensure all voters fully equal access to the polls regardless of the elction in which they exercise their right to vote would be subverted.

In resolving the issue of statutory construction presented here, the intent of Congress is instructive. The only logical construction of Section 5 of the Act, the preclearance requirement, and Section 4(b), the designation section, is that advanced by the United States. When these sections are read in light of the Act's structure, purpose, administrative and legislative history, it is clear that all political units within a designated state or other political subdivision should be subject to Section 5 preclearance requirements.

ARGUMENT

1. SECTION 5 OF THE VOTING RIGHTS ACT APPLIES TO MUNICIPALITIES AND OTHER POLITICAL UNITS WHICH DO NOT CONDUCT VOTER REGISTRATION.

A. A construction of the Voting Rights Act which limits Section 5 coverage to those political jurisdictions conducting voter registration would detrimentally affect Mexican Americans' voting rights which Congress meant to secure.

The systematic, pervasive and repetitive efforts of local, as well as state and county, election districts in Texas to disenfranchise Mexican Americans by intimidation, poll taxes, language tests, gerrymandering and other methods of vote dilution were the particular targets of Congressional action in the 1975 Amendments.[3/]

[3/] Amicus refers the Court to the Brief of the Mexican American Legal Defense and Educational Fund, NAACP Legal Defense and Educational Fund, Leadership Conference on Civil Rights as Amici Curiae on file with the Court in Briscoe v. Bell, No. 76-60 (October Term, 1976), for a detailed discussion of systematic and pervasive discrimination against Black and Mexican American voters in Texas. That brief also demonstrates that Congress meant to remedy those abuses by the 1975 extension of the Act to jurisdictions like those in Texas which have historically denied Mexican Americans voting rights

There are 254 Counties in Texas which would remain covered by Section 5 if the District Court decision is affirmed. There are, however, more than 2,900 special districts (including hospital, transit and junior college and airport districts), 1,475 school districts and over 1,200 municipalities in Texas.[4/] Each of these entities would presumably be free to effect whatever changes in voting requirements it wished, free of Section 5's preclearance requirement. Thus, as applied to the State of Texas, the District Court's interpretation of Section 5 would mean that all local political units which do not register voters, including cities, school districts, water districts and utility districts, could return, uninhibited, to those discriminatory practices which Congress found as the factual predicate for extending Section 5 to Texas.[5/]

The need for Section 5's preclearance requirements has been confirmed by the experience in Texas both before and since the District Court's decision in Sheffield. Since the enactment of the 1975 Amendments,

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[4/] Texas Almanac, 1976-1977

[5/] See, infra at 19-20.

there have been more than 2,300 Section 5 submissions from jurisdictions in the State of Texas to the Attorney General. Seventy-four percent of the proposed voting changes were made by political units of the State which do not register voters.[6/] Those statistics confirm what Congress found, i.e., those political units which most immediately affect voters in their day-to-day lives would be the units whose activities required the most monitoring.

As a result of the preclearance mechanism mandated by Section 5, the Attorney General has objected to proposed voting changes in a substantial number of municipalities and school districts because such charges would operate to discriminate against minority voters. The following is a partial list of letters of objection issued by the Attorney General during a fourteen month period against municipalities and school districts.

6/ Brief of the U.S. Attorney General in Hereford Independent School District v. Griffin B. Bell et al., Civil Action No. CA-2-77-14, filed June 17, 1977. (Three judge panel, N.D. Texas)

Date	Political Entity	Objectionable Change
Feb. 2, 1976	City of Tyler, Smith Co.	City Reapportionment
March 9, 1976	Forney I.S.D., Kaufman Co.	Place System and Majority Vote Requirement
March 10, 1976	Texas City, Galveston	Place System
March 11, 1976	City of Monahans, Ward Co.	Numbered Post
March 12, 1976	Dumas I.S.D., Moore Co.	Numbered Post and Majority Vote Requirement
March 19, 1976	Orange Grove I.S.D., Jim Wells Co.	Numbered Post
March 23, 1976	City of Pecos, Reeves Co.	Numbered Post
March 24, 1976	Chapel Hill I.S.D., Smith Co.	Majority Vote Requirement
March 29, 1976	City of Luling, Caldwell Co.	Voting Procedures
March 30, 1976	Lockney I.S.D., Floyd Co.	Majority Vote and Numbered Post
April 2, 1976	Victoria I.S.D. and Mission I.S.D., Victoria Co.	Consolidation of School Districts
April 2, 1976	City of San Antonio, Bexar Co.	Annexations
April 19, 1976	Liberty I.S.D., Liberty Co.	Majority Vote and Numbered Post
May 5, 1976	Pettus I.S.D., Bee Co.	Numbered Post
May 11, 1976	City of Lockhart,Caldwell Co.	Majority Vote Requirement
May 17, 1976	City of Rusk, Cherokee Co.	Place System
May 21, 1976	Trinity I.S.D., Trinity Co.	Numbered Post
May 24, 1976	Hereford I.S.D.,Deaf Smith Co.	Majority Vote Requirement
July 29, 1976	Marshall I.S.D., Harrison Co.	Majority Vote Requirement
August 6, 1976	Midland I.S.D., Midland Co.	Numbered Post and Majority Vote Requirement
October 8, 1976	Pettus I.S.D., Bee Co.	Reconsideration of Letter of Objection issued May 5, 1976. Denied
November 12, 1976	City of Woodville, Tyler Co.	Numbered Post
January 13, 1977	Westheimer I.S.D., Harris Co.	Creation of New School District
March 1, 1977	Somerset I.S.D., Bexar Co.	Place System
March 23, 1977	Ralls I.S.D., Crosby Co.	Majority Vote Requirement
March 24, 1977	Lufkin I.S.D., Angelina Co.	Numbered Post and Place System
March 25, 1977	Raymondville I.S.D., Willacy Co.	Polling Place
April 11, 1977	Praire Lea I.S.D., Caldwell Co.	Majority Vote Requirement Polling Place, Numbered Posts

As a result of these objections, those jurisdictions were prevented from implementing a number of discriminatory voting changes. Since Sheffield, however, local jurisdictions have resumed a pattern wholly consistent with the pattern of discriminatory activity which was the factual basis for the 1975 Amendments' inclusion of Texas. That is, there has been a widespread effort to implement voting changes whose obvious design it is to disenfranchise minority voters, including Mexican Americans. These discriminatory actions by Texas governmental units have forced the Justice Department and private litigants to pursue, on a case-by-case basis, the vindication of those rights guaranteed under the 1975 Amendments.

In the United States v. Board of Trustees of Chapel Hill I.S.D., Case No. TY-77-137-CA (E.D. Tex.); United States v. Westheimer I.S.D., Civil No. 77-H-121 (S.D. Tex.); United States v. Midland I.S.D., Civil No. MO-77-17 (W.D. Tex.); United States v. Hawkins I.S.D., Civil No. TY-77-81 (E.D. Tex.); Gomez v. Galloway (City of Beeville), Civil No. 76-146 (S.D. Tex.) and Hereford I.S.D. v. Bell, Civil No. 2-77-14 (N.D. Tex.), the school boards and cities involved have, in reliance upon the Sheffield decision, ignored the requirements of Section

5 that they seek preclearance from the Attorney General for changes in voting requirements.

In effect, these entities and others engaging in similar conduct, have decided to treat the Act's coverage of them as having been repealed on the authority of an out-of-state district court decision. They have thereby demonstrated an intent to implement voting changes operating to discriminate against minority voters despite the Attorney General's objections.

It is no less true today than it was when the Act and the 1975 Amendments were signed into law, that voting discrimination cannot be effectively prevented by litigation on a case-by-case basis. The process is too inefficient, costly and time-consuming to serve as an effective enforcement mechanism. These cases presently on file in District Courts throughout Texas represent only a small number of the instances where jurisdictions are attempting to implement discriminatory voting changes over the objections of the Attorney General or without submitting them for his evaluation. This amicus has been contacted by citizens of many other municipalities and school districts seeking assistance in resisting proposed changes in

other jurisdictions, including the Cities of Pecos, Luling and Lufkin and the Independent School Districts of Prairie Lea and Ralls, Texas. In each of these instances, local, non-registering political units have proposed changes in voting districts, polling places, or electoral schemes, and, despite objections from the Attorney General, have proceeded to the implementation of objectionable election practices.

The haste of these jurisdictions to resume the old ways of voting discrimination speaks eloquently to the abuses which Congress meant to remedy in drafting Section 5 of the Voting Rights Act. It can be expected that such discriminatory activities will continue if Section 5's provisions are held inapplicable to these and the thousands of other electoral units in the state not conducting voter registration. MALDEF has neither the time, money, nor personnel to enforce the rights of Mexican Americans effectively against this sort of pervasive discrimination which preceeded the Voting Rights Act and which has experienced a resurgence since the Sheffield decision. Neither, we respectfully suggest, does the Justice Department, except through the streamlined procedures of Section 5.

B. Congress intended that the Voting Rights Act have expansive coverage and that Section 5 apply to all political units of states designated under Section 4(b).

In enacting both the 1965 Act and the 1975 Amendments, Congress acted pursuant to the specific constitutional grant of power contained in Section 2 of the Fifteenth Amendment to the Constitution, which provides that:

> "The Congress shall have power to enforce this article[the right to vote] by appropriate legislation."

The Fifteenth Amendment does not, by its terms or by inference, suggest that the right to vote of any citizen may be abridged or diluted in municipal elections, in school district elections or in utility district elections. The right to vote guaranteed by the Fifteenth Amendment was intended to be and is a universal right to which Congress intended to give universal protection in passing the 1965 Act.

Indeed, this Court held in Allen v. State Board of Education, 393 U.S. 544, at 566,(1969), that Congress intended the 1965 Act be given the "broadest possible scope" to reach those enactments "which altered the election law of a covered State in any

minor way." The Court went on to note, "it is significant that Congress chose not to include . . . minor exceptions in Section 5 thus indicating an intention that all changes, no matter how small, be subjected to Section 5's scrutiny."

It would be anomalous to hold, in the light of Congress' broad charter under the Fifteenth Amendment and this Court's prior holding in Allen, that only the largest political subdivisions of a designated State are subject to Section 5's preclearance requirements. Such a holding would require a determination that Congress did not intend to protect all voters in all elections and ignore the guarantee of universal voter equality explicitly stated in the Fifteenth Amendment.

Prior to 1965, Congress had unsuccessfully attempted to use its enforcement powers under the Fifteenth Amendment to protect the rights of minority voters by providing aggrieved voters better access to the judicial process.

Under the Civil Rights Act of 1957[7/], the Civil Rights Act of 1960[8/], and the

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7/ 71 Stat. 634

8/ 74 Stat. 86

Civil Rights Act of 1964[9/], Congress provided the means by which private litigants and the Justice Department could seek judicial relief against the denial of political access to minority voters. However, when Congress studied the voting rights situation prior to the enactment of the Voting Rights Act of 1965, it was apparent that a novel solution to the age old problem of discrimination in the electoral process was needed.

Judicial relief pursued on a case-by-case basis had done little to solve the problem of racially motivated voter discrmination. Case-by-case litigation was too inefficient, costly and fragmented to make any significant impact upon the overwhelming pattern of discrimination against minority voters in certain areas of the country. Moreover, the combined resources of private litigants and the Justice Department were inadequate to do the extremely time-consuming work required in a voting rights case. The Attorney General testified before a House Judiciary Subcommittee that as many as 6,000 hours were spent merely in the factual analysis necessary for the trial of a single voting rights case. In addition, even when the

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9/ 78 Stat. 241

government was successful in litigating against unlawful voting requirements imposed by political jurisdictions in the southern states, that success was often met by defiance and evasion and, in some instances, by switching to discriminatory devices not addressed by the earlier litigation. U.S. Code "Cong. and Admin. News, 89th Cong. 1st Session", pp. 2437, 2441.

Having determined that case-by-case litigation was unavailing, Congress created in the 1965 Act a comprehensive, integrated scheme of administrative remedies requiring, essentially, that any changes in election and voting procedures in states and political subdivisions which met the coverage formula of the Act and were thus designated for coverage, be precleared by the Attorney General. Thus, in those states where there had been a history of voter discrimination, the burden was shifted to the state or political unit of the state to prove that intended changes were non-discriminatory. If they were not precleared, such changes were invalid and did not have the force of law. Unlike previous enforcement attempts, this Congressional effort was a tremendous success and has been hailed as the most effective civil rights

legislation ever passed. Since its enactment the number of Blacks registered in the seven Southern states covered by the Act has nearly doubled and the number of Black elected officials has increased almost tenfold.10/

In January, 1975, the U.S. Commission on Civil Rights submitted a report, "The Voting Rights Act: 10 Years After" to Congress. In its report, the Commission advised the Congress that so-called "language minorities" were suffering discrimination similar to that previously directed at Black Americans and were effectively being denied the right to vote in many areas of the country. Following receipt of this document, Congress held extensive hearings to examine discrimination against language minorities in the electoral process.11/

10/ Senate Hearings Before the Senate Subcommittee on Constitutional Rights, Extension of the Voting Rights Act of 1965, 94th Congress, 1st Session (1975) at 121.

11/ See generally, Senate Hearings Before the Senate Subcommittee on Constitutional Rights, Extension of the Voting Rights Act of 1965, 94th Congress, 1st Session, (1975) [hereinafter "1975 Senate Hearings"]; Hearings Before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciaries, House of Representatives,

Congress took voluminous testimony concerning the status of minority language voters, primarily in Texas, and the record reveals voting discrimination in Texas on a scale paralleling that which existed in the South prior to the enactment of the 1965 Act.[12/] The evidence before Congress when it considered the Texas experience was not limited to abuses by the State and those jurisdictions which conducted voter resistration. Rather, it considered discriminatory practices emanating from various local governmental entities which demonstrate that pervasive discrimination existed at all levels of Texas electoral politics.

94th Congress, 1st Session (1975) [hereinafter "1975 House Hearings"].

12/ In reaching this conclusion, Congress noted that it required five lawsuits and twenty-five years before the White primary was finally eliminated in Texas in 1953. Nixon v. Herndon, 273 U.S. 536 (1927); Nixon v. Condon, 286 U.S. 73 (1932); Grovey v. Townsend, 295 U.S. 45 (1935); Smith v. Allwright, 321 U.S. 649 (1944), and Terry v. Adams, 345 U.S. 461 (1953).

The Congress also noted that it required a Constitutional amendment and a Justice Department lawsuit to eliminate the poll tax in Texas, and that, upon elimination of this device, Texas enacted "the most restrictive voter registration procedures in the nation" to replace the poll tax. Graves v. Barnes, supra., 343 F. Supp. 704 at 731.

During the course of the hearing, various witnesses called Congress' attention to situations which demonstrated the need for federal involvement in the local election process to protect the rights of all citizens. These include:

1. voting irregularities in local elections which discriminated against Mexican Americans; 13/

2. physical intimidation and harassment of minority voters at the polls in local elections; 14/

3. change to a majority run-off, numbered place system for Nacogdoches City elections which was designed to discriminate against minorities. 15/

4. change in election dates for the City of Nacagdoches in order to avoid the impact of the student vote; 16/and

5. the activities of cities and school districts in Corpus Christi, Lufkin and Waco adopting election changes in order to minimize and dilute growing minority voting strength. 17/

13/ 1975 House Hearings 362, 403-404, 522-29, 800, 809-11, 820, 825-826.

14/ Id. at 522. See also 1975 Senate Hearings at 947 and Allee v. Medrano, 416 U.S. 802 (1974).

15/ 1975 House Hearings 400-401.

16/ Id. at 401.

17/ Id.

Congress was also urged during the course of these hearings to provide a mechanism for close monitoring of the electoral process of all political units.

Congress heeded the testimony of the witnesses who urged that expansive coverage of all political units in designated jurisdictions was necessary to end discrimination and the Senate Report clearly indicates its concern that the protections of the Voting Rights Act extend to the cities and school districts of Texas, political entities which do not register voters.

> "Election law changes which dilute minority political power in Texas are widespread in the wake of recent emergence of minority attempts to exercise their right to vote . . . The at-large structure with accompanying variations of the majority run-off, numbered place system, is used extensively among the 40 largest cities in Texas. And, under state statute, the countless school districts in Texas elect at-large with an option to adopt majority run-off, numbered place system. These structures effectively deny Mexican American and Black voters in Texas political access in terms of recruitment, nomination, election and, ultimately, representation."

[emphasis supplied]

Senate Report No. 94-295, 94th Congress,

1st Session, U.S. Code Congressional and Administrative News p. 793-4.

The statement of Senator Tunney to an expert witness during the hearings on the 1975 Amendments is further illustrative that Congress intended Section 5 to have the broadest possible coverage:

> "You are saying that Section 5 coverage is absolutely essential to guarantee that the Spanish-speaking citizens in various locations in Texas have an opportunity to participate, not only in voting for the government, the U.S. Senate, but have a voice also as it relates to water districts and other levels of legislative responsibility which can have a tremendous impact, economic and otherwise, on the lives of those citizens in Texas; and that the discrimination they suffer will occur in these local elections is perhaps even more subtle than an election for Governor, President or U.S. Senator."

[emphasis supplied]
Id. at 792.

Congress, as a result of those hearings, amended the Voting Rights Act to protect language minorities against voting discrimination, as Blacks in the South had previously been protected under the 1965 Act. The amended Act determines coverage in a manner which parallels the 1965 Act. Section 4(b) sets out the formula for

determining which jurisdictions will be subject to Section 5 coverage and states that these provisions will apply "in any state or in any political subdivision of a state" which satisfies the coverage formula. If an entire state does not meet the formula, "a political subdivision of a state" may be covered if it meets the formula. For this purpose, determination if less than an entire state may be covered, political subdivision is defined in Section 14(c)(2) as follows:

> The term "political subdivision shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a state which conducts registration for voting."

There is no indication that this definition limits the portion of a state which must comply with Section 5 coverage in those cases where the entire state triggers the coverage formula. Rather, the language indicates a Congressional intent that in cases where an entire state is covered, the preclearance requirements of Section 5 are applicable to all voting changes made within the state whether by state legislature, county government, muni-

cipal government or any other unit of the state with duties and responsibilities affecting voting. In such a case, there is no indication that only voting changes by "political subdivision" are to be subjected to preclearance.

Such an analysis of the Act is the only proper and logical construction given the history of voting discrimination on the local level by the jurisdictions Congress intended the Act to cover, and the articulated intent of Congress to protect voters from all discrimination in the electoral process. Congress, in an exercise of its enforcement power would not leave the minority voters of covered jurisdictions subject to unchecked discrimination in the vast majority of elections while attempting to insure their right to vote under the Fifteenth Amendment for "what is done at a local level by local officials often had the most impact upon the ability of these minorities to vote." . . . Id.

CONCLUSION

The Congress, in the face of overwhelming evidence of racial discrimination and voting discrimination practiced on a systematic basis against Mexican Americans in various areas of the country, extended the 1965 Act and amended it to include as a designated state the State of Texas. By that action, the Congress required all political units in the State of Texas to seek the approval of the United States Attorney General prior to changing election practices and laws. In the short time that Texas has been covered by the Act, there have been 2,300 such proposed changes submitted to the Attorney General. Seventy-four percent (74%) of the proposed changes were proposed by non-registering Texas political units. Since the novel, unprecedented and startling opinion of the District Court in the Northern District of Alabama in United States v. Board of Commissioners of Sheffield, local Texas jurisdictions have totally ignored the requirements of securing the Attorney General's preclearance of proposed election changes. Numerous of these jurisdictions have proposed and implemented voting changes which

are clearly designed to continue that pattern of discrimination against Mexican American voters which Congress attempted to cure by the 1975 Amendments. The limited available litigation resources are being utilized to attempt to resist the tide of voter discrimination which threatens to sweep over Texas. History tells us that litigation is not the answer. Only the provisions of the Civil Rights Act and its 1975 Amendments can effectively police the activity of Texas jurisdictions and guarantee the voting rights of Mexican Americans in Texas.

The District Court for the Northern District of Alabama was wrong as a matter of law in Sheffield, as a result of which the rights of Mexican American voters in Texas have been placed at the mercies of local jurisdictions whose prior behavior towards them was such that Congress felt it necessary to pass a law especially to control them.

For the foregoing reasons, and for the reasons set forth in the brief for the United States, the decision below should be reversed.

Dated: August 11, 1977.

Respectfully submitted,

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